Ontario

College Relations Commission

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To: The Members of the Legislative Assembly
Province of Ontario

ANNUAL REPORT
1983-1984

Dear Members,

We have the honour to present the Ninth Annual Report of the College Relations Commission, covering the period from September 1, 1983 to August 31, 1984.

Sincerely

The College Relations Commission

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DUTIES OF THE COMMISSION

The College Relations Commission was established by Section 55 of **The Colleges Collective Bargaining Act.** Revised Statutes of Ontario, 1980. Its duties are:

a) to carry out the duties imposed on it by this Act and such other functions as may, in the opinion of the Commission, be necessary to carry out the intent and purpose of this Act;

b) to maintain an awareness of negotiations between the parties;

c) to compile statistical information on the supply, distribution, professional activities and salaries of employees;

d) to provide such assistance to parties as may facilitate the making or renewing of agreements;

e) to select and, where necessary, to train persons who may act as mediators, fact finders, arbitrators or selectors;

f) to determine, at the request of either party or in the exercise of its discretion, whether or not either of the two parties is or was negotiating in good faith and making every reasonable effort to make or renew an agreement;

g) to determine the manner of conducting and to supervise votes by secret ballot pursuant to this Act; and

h) to advise the Lieutenant-Governor in Council when, in the opinion of the Commission, the continuance of a strike, lock-out or closing of a college or colleges will place in jeopardy the successful completion of courses of study by the students affected by the strike, lock-out or closing of the college or colleges.

The Chief Executive Officer and Secretary of the Commission is R.H. Field. The Commission's offices are at 111 Avenue Road, Suite 400, Toronto, Ontario M5R 3J8.

During the reporting period, Ian R. Linton, Q.C. who had served as Vice-Chairman of the Commission since 1975, completed his second term and did not stand for reappointment. Known for his quiet leadership and his sensitivity to the issues of education in general and the colleges in particular, Mr. Linton was a valued member of the Commission during his tenure.

In December, T. Gary O'Neill, an Ottawa lawyer, was appointed to and designated as Vice-Chairman of the College Relations Commission for a three-year term.

MEMBERS OF THE COMMISSION

Chairman —
BRYAN M. DOWNIE, B.A. (Concordia, Minnesota), M.B.A. (University of Chicago), Ph.D. (University of Chicago).

Dr. Downie, (Professor Industrial Relations and Public Policy, Queen's University) has served as a fact finder, mediator, and interest arbitrator. He has published extensively in the area of labour relations and his book, *Collective Bargaining and Conflict Resolution in Education* examines the activities and policies of the Education Relations Commission during the formative years. He is Canadian Director and a Board member of the Society of Professionals in Dispute Resolution, an association of third party neutrals based in Washington, D.C. and is currently President-elect of the Canadian Industrial Relations Association and a member of the Board of Directors of Social Science Federation of Canada.

Vice-Chairman —
T. GARY O'NEILL, B.A.Sc. (University of Toronto), M.Eng. (Carleton), LL.B. (University of Ottawa).

Mr. O'Neill is a member of an Ottawa law firm who is knowledgeable in both dispute resolution and the issues in the Education sector of Ontario. Since 1977, Mr. O'Neill has served as a third-party on numerous occasions.

Commissioner —
HARVEY M. NIGHTINGALE, B.A. (University of Western Ontario), M.Ed. (University of Toronto), M.A. (York University).

Mr. Nightingale served as Director of Economic and Legislative Services for the Ontario Trustees' Council from 1973 to 1981. In this position he was responsible for both developing and articulating the trustees' position on various educational issues, including collective bargaining — the School Boards and Teachers Collective Negotiations Act.

Mr. Nightingale is Executive Director of the Ontario Nursing Home Association.

Commissioner —
LOUISE D. BINDER, B.A. (University of Toronto), LL.B (Queen's University).

Miss Binder is Co-ordinator of Labour Relations with Gulf Canada Products Limited. Following graduation from law school she practised labour law for management with a Toronto law firm. Since 1977, she has been in private sector Employee Relations.

Miss Binder is also a member of the Ontario Public Service Labour Relations Tribunal.

Commissioner —
DONALD S. FELKER, B.A. (University of Ottawa), M.Ed. (University of Toronto), Ed.D. (University of Pennsylvania).

Dr. Felker, a self-employed educational consultant, has served as an appointee to both grievance and arbitration boards. He spent thirteen years in the Ontario Public School System as a Teacher, Vice-Principal and Principal and from 1968 to 1973, he served as General Secretary for the Ontario Secondary School Teachers' Federation. Dr. Felker is a Fellow of the Ontario Teachers' Federation and a Life Member of the Ontario Secondary School Teachers' Federation.

I INTRODUCTION

The mandate of the College Relations Commission — to maintain an awareness of and to facilitate collective negotiations between the Ontario Council of Regents for Colleges of Applied Arts and Technology, as employer, and the Ontario Public Service Employees Union, representing the Academic and Support Staffs — is contained in the **Colleges Collective Bargaining Act.** Passed in 1975, and revised in 1980, this Act gives both the Academic Staff and Support Staff the right to strike and the Ontario Council of Regents for Colleges of Applied Arts and Technology the right to lock-out. These rights, however, are regulated. For example a strike or lock-out is not legal until:

a) A fact finder has met with the parties and his/her report has been made public; and

b) A 30-day cooling off period takes place after the fact finder's report is submitted to the parties; and

c) After the members of the employee organization have voted — by secret ballot in a supervised vote — on the last offer of the Council of Regents; and

d) After the members of the employee organization have voted — by secret ballot in a supervised vote — to take strike action.

At any time during the process, the parties may choose voluntary binding arbitration, or final offer selection as an alternate means of dispute resolution.

The Commission maintains its awareness of the negotiation process from the filing of an intent to negotiate by the parties, to the signing of a collective agreement. Particular attention is paid to the timing and appropriateness of appointments of fact finders, and mediators.

The conduct of votes — last offer, strike, or ratification — has assumed major importance for the Commission. This is due not only to the number of votes which have been supervised, but also to the number of members of the employee organizations, and the number of campuses involved.

II STAFF AND FACILITIES

The Commission shares staff and facilities with the Education Relations Commission and has participated with the Education Relations Commission in the training of fact finders, mediators, arbitrators and selectors. Therefore, for a more complete picture of this year's activities, reference should be made to the Ninth Annual Report of the Education Relations Commission.

During the reporting year, one training session was held for fact finders. The Commission continued to recruit additional individuals with high qualifications and from a variety of backgrounds; seven were academics whose training is in industrial relations, eight were lawyers specializing in labour law, and five were former school trustees or administrators. A feature of this year's workshop was a simulated fact finding hearing. Participants at the workshop were asked to file a fact finder's report based on this simulation.

III INFLATION RESTRAINT ACT (BILL 179)

The bargaining climate was dramatically changed when *An Act Respecting the Restraint of Compensation in the Public Sector of Ontario and the Monitoring of Inflationary Conditions in the Economy of the Province* (The Inflation Restraint Act or Bill 179) was given first reading in the legislature on September 21, 1982. Third reading did not occur until December 15 (although by Section 36 this Act is deemed to have been passed on September 21). As a result of this waiting period, and the uncertainty surrounding the final draft of the Act and its implications for the parties there was no bargaining in the colleges' sector for approximately three months.

This legislation, commonly referred to as Bill 179 or the Inflation Restraint Act limited compensation increases in the public sector to "up to 9 percent" in the first year of the program (the "transitional" year) and to 5 percent in the second year (the "control" year). The legislation removed the right to strike or lock-out and also provided for the establishment of the Inflation Restraint Board (IRB) to administer the Act, set its internal policies and procedures and to monitor wage and price controls in the public sector.

The significant sections of the Act are as follows:

> Section 13: which extends the terms and conditions of the collective agreement;
>
> Section 14: which allows the parties to a collective agreement to apply to the IRB with respect to certain disputed matters;
>
> Section 15: which states that parties to a collective agreement which includes a compensation plan that is extended under Section II may, by agreement, amend the terms and conditions . . . other than compensation rates . . .

In the spring, the Ontario Public Service Employees Union applied for a judicial review of a decision of the Ontario Labour Relations Board with respect to the interpretation of section 13 of Bill 179 in the case of Broadway Manor Nursing Home. This application was joined by a request from the Durham Board of Education for the judicial review of a decision of the Education Relations Commission involving the same point of law i.e. by extending the terms and conditions of the collective agreement is the collective agreement itself extended?

The Divisional Court of the Supreme Court of Ontario ruled that section 13 (b) which extended "the terms and conditions of every collective agreement that includes a compensation plan" violated section 2 of the Charter of Rights (freedom of association).

since it prevented the displacement of the Christian Labour Association of Canada by the Service Employees' International Union Local 204. The ruling in favour of the Ontario Public Service Employees' Union and the Education Relations Commission was appealed in the Court of Appeal. No decision has been reached at the time of the writing of this report.

IV NEGOTIATIONS AND APPOINTMENTS

Public Sector Prices and Compensation Review Act (Bill 111)

Negotiations for the 1984-1985 bargaining year began in January and are subject to Bill III, *An Act to Provide for the Review of Prices and Compensation in the Public Sector and for an Orderly Transition to the Resumption of Full Collective Bargaining.* Also known as the *Public Sector Prices and Compensation Review Act, 1983,* this legislation was introduced on November 8, 1983, given third reading on December 13, 1983, but is deemed to have come into force on October 1, 1983. The Treasurer, when introducing this legislation stated:

> While collective bargaining will be restored, we will ensure the continuation of restraint by placing clear limits on funding for all public sector wage increases during the coming year. Our grants and transfers to municipalities, school boards, universities and other publicly-funded institutions, as well as allocations for our own civil servants, will provide for average compensation increases of up to 5 percent for a group.

This created a totally new climate for collective bargaining in Ontario's education sector beginning in January, 1984.

The return to collective negotiations after a two-year hiatus and with informal limits on total compensation for 1984-1985 has major implications for the length and character of the bargaining process.

1. Support Staff

Negotiations between the Ontario Public Service Employees Union representing the Support Staff and the Council of Regents began in January with the union delivering a "notice" of intent to negotiate to the Council, and filing a copy with the Commission. Between February and April, the parties met on a number of occasions. Following a *joint* request by the parties, the Commission appointed a fact finder to assist the parties. His report went to the parties on May 25, and was released to the public on June 18.

The fact finder stated:

> During the joint hearing, representatives of both parties indicated strongly that while cooperating with the Fact Finding process, they hoped that detailed recommendations would not be made,

> because in their view such recommendations could hamper the progress of negotiations given the way they had been structured for this contract period.

and noted:

> The parties continue to explore items and have established a bargaining timetable for this purpose.

At the request of the union, a vote on the last offer received from the Council of Regents, supervised by the Commission, was held on June 22. The union membership, by a vote of 3025—403 rejected the last offer of the Council of Regents.

The Commission, on July 27, 1984, appointed a mediator to assist the parties. Shortly after this appointment, the union requested that the Commission supervise a strike vote. The members, voting on August 14, indicated that by a vote of 1959 to 1546 they were in favour of strike action.

Negotiations continued, and the parties, with the help of the mediator, were able to reach a tentative agreement on August 30.

The union requested that the Commission supervise a ratification vote, according to Section 88 of the Act. On September 17, the union members voted 2711—848 to ratify the one-year collective agreement which expires on August 31, 1985.

2. Academic Staff

Negotiations between the Council of Regents and the Ontario Public Service Employees' Union were considerably more difficult. Negotiations began in January when the union delivered an "intent to negotiate" to the Council of Regents and filed a copy with the Commission. Following many negotiating meetings the parties *jointly* requested the appointment of a fact finder by the College Relations Commission. The request from the Staff Relations Section of the Ministry of Colleges and Universities, negotiating on behalf of the Council of Regents, contained the following statement:

> However, in our view, the application is certainly premature having regard to the fact that a proposal was tabled by the Council on Wednesday morning June 6 with respect to the issue of workload.

After clarification of this statement the Commission appointed a fact finder. He requested, and in spite of strongly worded objections by the parties, was given a 30 day extension by the Commission. The report was delivered to the parties on August 20th and was released to the public on September 5th. In the report the fact finder noted:

> Given (a) the depth of feeling and strength of convictions expressed to me by the parties, and (b) the difficulties involved in making changes such as those suggested above, I have grave doubts that the parties will be able to reach agreement on the complex issues which divide them without the exercise of some form of economic sanctions either in this round, or subsequent rounds, of bargaining. Given my perception of the situation and the importance of the issues to the future of the College System, its academic staff, college administration, students, and the public in Ontario, *I recommend that the parties jointly consider ways, such as those set out above, to change their bargaining structure (with its centralized negotiations and decentralized contract administration), and/or their bargaining relationship (which is presently characterized by aggression, conflict, antagonism, a high level of distrust, the overt use of power and influence attempts, and the denial of legitimacy to the other party and its representatives) in order to facilitate a problem-solving approach to the complex issues, such as workload, which divide them.*

The Commission on August 20, 1984 appointed a mediator. He met with the parties in late August prior to the release of the report to the public.

In a vote held on September 18, which was requested by the union and supervised by the Commission, the membership voted 5769—279 to reject the last offer received from the Council of Regents.

The mediator continued to work with the parties in sessions held on the 24th and the 25th of September.

In the light of the strongly worded comments in the Fact Finder's report, reports received from the mediator and from other information gathered by the Commission staff a strike seems to be inevitable. Regardless of the outcome of negotiations in this difficult round, the Commission intends to assist the parties through series of preventive mediation initiatives in the forthcoming year.

For details of the preventive mediation program please refer to the 1983-84 Annual Report of the Education Relations Commission.

3. Good Faith Bargaining

Both the Ontario Public Service Employees Union, representing the Academic Staff and the Council of Regents made application to the Commission for determinations according to Section 56(f) — whether or not either of the parties was negotiating in good faith. These charges were investigated by the Chief Executive Officer, as outlined in policy of the Commisssion's Policy and Procedures Manual. The College Relations Commission set dates for the hearing of these charges, however, following a joint request by the parties the Commission agreed to a postponement sine die.